

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID H. MARION, Receiver for	:	CIVIL ACTION
Robert L. Bentley, Bentley	:	
Financial Services, Inc. and	:	
Entrust Group	:	
	:	
v.	:	
	:	
BENISTAR, LTD., BENISTAR 419	:	
PLAN SERVICES, INC., BENISTAR	:	
419 ADVANTAGE BENEFIT PLAN	:	
AND TRUST and BENISTAR	:	
ADMINISTRATIVE SERVICES, INC.	:	NO. 03-4700

MEMORANDUM AND ORDER

Fullam, Sr. J.

August , 2004

Defendants filed a motion to dismiss plaintiff's amended complaint. Plaintiff filed a motion to strike, contending that in exchange for plaintiff's agreement to set aside a default which had been entered by the Clerk's Office, defendants had agreed that they would "answer" the complaint within the time specified in a stipulation. Plaintiff has also filed a response to the motion to dismiss. I conclude that the merits of the motion to dismiss should be addressed at this time. Although the parties' original stipulation appears to have contemplated that the defendants would file an answer rather than a motion, the order entered by the court allowed them to "respond" to the amended complaint. The motion to strike will therefore be denied. And, as a practical matter, the issues

raised by the motion to dismiss could undoubtedly be made the subject of a later motion for judgment on the pleadings, in any event.

Plaintiff is the Receiver for the Bentley entities, which carried out an extensive Ponzi scheme and damaged many victims. Plaintiff is trying to recover, for the benefit of these victims, assets which the Bentley entities transferred to others before the receivership was ordered.

The defendants are a multi-employer welfare benefit plan and the entities which run it. The amended complaint alleges that, a couple of years before the receivership was ordered, the Bentley entities transferred \$196,000 to the defendant Plan, and that this sum should be returned to plaintiff. The amended complaint asserts the following claims: Count I, Unjust Enrichment; Count II, Constructive Trust; and Count III, "Return of Contributions." Defendants assert that there can be no claim of unjust enrichment, since there was a contract between the Bentley entities and the defendants and that the asserted claims for constructive trust and return of contributions are not separate claims, but merely forms of relief which plaintiff might obtain if there were any basis for Count I.

I conclude that plaintiff should be required to file a further amended complaint, which clarifies the precise theory or theories being relied upon. It is true that a claim of unjust

enrichment cannot be advanced when there is an express contract between the parties, but it is also true that there can be a claim for unjust enrichment if the contract is nugatory, or if there is an extra-contractual basis for relief.

Viewed in their totality, the averments of the amended complaint can be interpreted as asserting, not only that the defendant breached the contract between themselves and the Bentley entities, but also that the contract was invalid, and that the contract is subject to rescission. In addition, plaintiff's brief seems to assert, for the first time, that the transfers made by the Bentley entities to the defendants were made at a time when the Bentley entities were insolvent, and constituted fraudulent conveyances. No such theory is alleged in the amended complaint, however.

On its face, the defendants' Plan is a multi-employer benefit plan, and the transfers complained of were simply payments made by an employer to fund benefits payable at death to two highly placed employees. Apparently, Mr. Bentley contracted to pay \$65,000 per year to the Plan, so that the Plan could purchase life insurance policies which would fund a death benefit. These payments were supposed to give rise to tax-deductions and other benefits. Plaintiff alleges that the defendants misrepresented the nature of the Plan, or breached their contractual obligations in some respect.

If the defendants breached the contract, or if Mr. Bentley could have rescinded it, plaintiff would have standing to assert whatever claims Mr. Bentley might have in that respect. If, on the other hand, Mr. Bentley merely exercised poor business judgment, plaintiff may have no basis for relief.

If the transfers were made at a time when the Bentley entities were insolvent, the issue would be whether there was adequate consideration for the transfers. As noted above, the plaintiff's brief speaks of fraudulent conveyance theories, but the amended complaint contains no allegations in that respect.

I conclude that, if plaintiff has any valid legal theory for imposing liability upon the defendants, the precise basis or bases upon which relief is sought should be clarified.

An order follows.

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ORDER

AND NOW, this            day of August 2004, IT IS ORDERED:

1. Plaintiff's motion to strike defendants' motion to dismiss is DENIED.

2. Defendants' motion to dismiss the amended complaint is GRANTED. The amended complaint is DISMISSED, without prejudice to the filing of an amended complaint within 30 days.

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John P. Fullam, Sr. J.